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NO. 08-909

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

YONG LI,

Petitioner,

v.

RAYTHEON COMPANY AND OTHERS,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MASSACHUSETTS SUPREME JUDICIAL COURT

BRIEF OF RAYTHEON COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Dated: February 23, 2009

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

QUESTION PRESENTED

1. Whether the Massachusetts Appeals Court's decision to affirm the dismissal of Petitioner's race discrimination and retaliation claims for failure to state a claim upon which relief can be granted constitutes a decision on an important federal question that conflicts with the decision of another state court of last resort, a United States court of appeals, or the relevant decisions of this Court, or raises an important federal question that has not been, but should be, settled by this Court.

LIST OF PARTIES AND RULE 29.6 STATEMENT

The parties named in the caption, Yong Li and Raytheon Company ("Raytheon"), were not the only parties to the proceedings before the Massachusetts Supreme Judicial Court, Massachusetts Appeals Court, and Massachusetts Superior Court. The Massachusetts Division of Professional Licensure was initially a named defendant but was dismissed from the case at the Superior Court level. Petitioner also indicated that her Petition does not seek Writ of Certiorari as to Arthur Buliung, Ian C. Mitchell, and John Didio, all of whom were defendants in the proceedings before the lower courts. (Pet. at 1 & n.1). Raytheon has no parent companies, and there are no publicly-held companies that own ten percent or more of its stock.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent Raytheon Company respectfully opposes the petition for writ of certiorari to review the decision of the Massachusetts Appeals Court.

OPINIONS BELOW

As stated by Petitioner.

JURISDICTION

The Court has jurisdiction to review Petitioner's petition pursuant to 28 U.S.C. § 1257. Petitioner incorrectly cited to 28 U.S.C. § 1254 as the basis for the Court's jurisdiction in her petition.

STATUTES INVOLVED

Respondent contends that only Massachusetts General Laws, Chapter 151B is involved and relevant to the petition.

STATEMENT OF THE CASE

Factual Background.

Respondent contends that Petitioner has ignored her obligations under *Rule 14(1)(g) of the Rules of Supreme Court of the United States* to provide a "concise statement of the case setting out the facts material to consideration of the questions presented" and to "(i) . . . specify the stage in the proceedings below, both in the court of first instance and in the appellate courts, when the federal ques-

tions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears . . ., so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari." Instead, Petitioner concedes that her "complaint was not adequately written" but that "it is not necessary to list the facts" of her case in the petition (despite the requirements of *Rule 14(1)(g)*) because the petition "has nothing to do with the merit of the case." (Pet. at 4).

Respondent submits that Petitioner's Statement of the Case violates the letter and spirit of *Rule 14(1)(g)*. The question presented in the petition focuses on the lower courts' dismissal of her state race discrimination and retaliation claims for failure to state a claim upon which relief can be granted under Rule 12(b)(6) of the Massachusetts Rules of Civil Procedure. Thus, Petitioner's recitation of the facts that are material to her claims and, by extension, the Court's consideration of the question presented is essential to a determination of whether the lower courts' judgment constitutes an error that is appropriate for this Court to review on a writ of certiorari.

Pursuant to *Rule 15(2) of the Rules of the Supreme Court of the United States*, Respondent submits that the brief recitation of facts set forth in the decision of the Massachusetts Appeals Court issued on March 25, 2008, (Pet. at 4a-11a), is concise, correct, and sets out the facts material to consideration

of the question presented in the petition. Specifically, Petitioner's racial discrimination claim (brought under Massachusetts General Laws, Chapter 151B) is based upon allegations that Raytheon, in effect, supported misconduct by one of the Company's human resources representatives, Arthur Buliung. (Pet. at 5a). As the Massachusetts Appeals Court observed, Petitioner did not allege in her complaint that Mr. Buliung discriminated against her on the basis of race. (Id.). Petitioner's retaliation claim (also brought under Massachusetts General Laws, Chapter 151B) is centered on her allegations that Raytheon (1) caused her to have a "mental evaluation as a means of reprisal or to control anti-discrimination complaint," and (2) sent her a letter, which she viewed as a threat to terminate her "while she was exercising her right of Family Medical Leave Act (FMLA)." As the Massachusetts Appeals Court noted, Petitioner failed to allege in her complaint the required element that she suffered an "adverse employment action," as defined under state law. (Id.). Finally, as stated above, the petition does not seek the Court's review as to any claims originally brought against defendants-appellees Arthur Buliung, Ian C. Mitchell, and John Didio. (Pet. at 1 & n.1). Therefore, Raytheon Company is the only respondent for purposes of the Court's consideration of the petition.

Proceedings Below.

Respondent agrees with the major points set forth in Petitioner's description of the Proceedings Below. Respondent, however, objects to certain argumentative statements made therein. Therefore, for clarity of the record and convenience of the

Court, Respondent provides its own statement of the Proceedings Below.

On May 11, 2006, Petitioner filed an eight-count complaint in Massachusetts Superior Court. In the complaint, Petitioner asserted, among other claims, a race discrimination claim against Raytheon (Count I); a retaliation claim against the Raytheon, Ian C. Mitchell, and Arthur Buliung (Count II); a claim for violation of the Massachusetts Civil Rights Act (violation of First Amendment rights) against Raytheon (Count III); a claim for violation of the Massachusetts Civil Rights Act (violation of Fifth Amendment rights) against Raytheon and John Didio (Count IV); a negligent/reckless/intentional infliction of emotional distress claim against Raytheon, Mr. Buliung, and Mr. Didio (Count V); a misrepresentation claim against Mr. Buliung (Count VI); and a claim for tortious interference with advantageous [business] relations against Raytheon, Mr. Mitchell, and Mr. Buliung (Count VII). (Pet. at 14a-32a).

On June 23, 2006, Raytheon, among other defendants, filed a Motion to Dismiss all claims against the Company. (Pet. at 5). On October 10, 2006, Petitioner filed a Motion to Amend Complaint, in which she proposed to add Scott Oglesby, Stephanie Kolenski, and Irving Kooris as defendants, and proposed new claims, including violation of "right of privacy" against Raytheon (Count IX), violation of "right of consent" against Raytheon and Mr. Buliung (Count X), violation of the Massachusetts Civil Rights Act against Raytheon and Mr. Buliung (Count XI), and a negligence claim against Raytheon (Count XII). Petitioner also sought to add Ms. Kolenski to her mis-

representation count (Count VI), and to add Mr. Oglesby to her tortious interference count (Count VII). (Pet. at 5).

On October 11, 2006, the Superior Court granted the defendants' Motion to Dismiss in its entirety but agreed to consider Petitioner's Motion to Amend Complaint. (*Id.*) Upon review of Petitioner's Motion to Amend Complaint and the defendants' Opposition, the Court denied Petitioner's Motion on November 6, 2006, and entered Final Judgment in favor of all defendants on all claims in this case on November 7, 2006. (Pet. at 1a).

Petitioner filed a Notice of Appeal from the Final Judgment, as well as from the Superior Court's denial of her Motion to Amend Complaint, on November 21, 2006. (Pet. at 5). On March 25, 2008, the Massachusetts Appeals Court issued its decision, affirming the Superior Court's orders to dismiss the case against all defendants and to deny Petitioner's Motion to Amend Complaint. (Pet. at 3a-11a). In its decision, the Appeals Court affirmed the Superior Court's decision with respect to Counts III, IV, VI, and VIII of the complaint because Petitioner failed to challenge the dismissal of these counts and, thereby, waived the claims. The Appeals Court affirmed the Superior Court's dismissal of the remaining claims (Counts I, II, V, and VII) pursuant to Mass.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief can be granted. Finally, as to Petitioner's appeal of the Superior Court's denial of her Motion to Amend Complaint, the Appeals Court found that Petitioner "failed to meet her burden of demonstrating error in [the Superior] Court's ruling." (Pet. at 10a-11a).

On May 21, 2008, Petitioner filed an Application for Further Appellate Review of the case with the Massachusetts Supreme Judicial Court. (Pet. at 7). Respondent opposed the Application on June 23, 2008. Petitioner's Application was denied on July 23, 2008. (Pet. at 12a). Petitioner filed a Petition to Reconsider the Court's Denial of her Application for Further Appellate Review on August 13, 2008. The Court denied Petitioner's Petition on September 8, 2008. (Pet. at 13a). Further, the relevant decisions and orders below were not reported.

Petitioner's petition concerns only her race discrimination (Count I) and retaliation (Count II) claims under state law against Raytheon. (Pet. at 1).

REASONS FOR DENYING THE PETITION

I. THE PETITION SHOULD BE DENIED BECAUSE THE MASSACHUSETTS APPEALS COURT'S DECISION DOES NOT RAISE AN IMPORTANT FEDERAL QUESTION.

The petition should be denied because it does not implicate any of the compelling reasons cited by the Court in *Rule 10 of the Rules of Supreme Court of the United States* to grant a writ of certiorari, such as a conflict regarding an important federal question. Specifically, the question presented in the petition is based on the false premise that the Massachusetts Appeals Court's decision to affirm the dismissal of Petitioner's complaint on grounds that were valid but different than those relied on by the Massachusetts Superior Court is "unprecedent[ed] in U.S. history" and conflicts with the "authoritative decisions" of several United States courts of appeals and other state courts of last resort on the "same issue." (Pet. at 9-10). Despite Petitioner's apparent attempt to frame the question presented as one that implicates a federal question, the question actually presented in the petition concerns only the application of the Massachusetts Rules of Civil Procedure to the particular facts of Petitioner's case, which was brought under state law in state court. Hence, Petitioner's appeal was properly considered and decided by the Massachusetts Appeals Court, and the Massachusetts Supreme Judicial Court refused to reconsider said decision on Petitioner's Application for Further Appellate Review. Because the question presented in the petition seeks review of a state de-

cision that analyzed the application of state-specific court procedural rules, however, the petition does not present this Court with a decision on an important *federal* question that conflicts with the decision of another state court of last resort, a United States court of appeals, the relevant decisions of this Court, or raise an important federal question that has not been, but should be, settled by this Court. *See Rule 10 of the Rules of Supreme Court of the United States.* Therefore, the petition should be denied.

II. THE PETITION SHOULD BE DENIED BECAUSE THE MASSACHUSETTS APPEALS COURT'S DECISION IS CONSISTENT WITH MASSACHUSETTS PRECEDENT AND A SIMILAR LONGSTANDING RULE OF THIS COURT CONCERNING APPELLATE REVIEW OF DISMISSAL ORDERS AND DECISIONS.

Assuming *arguendo* that the question presented in the petition is of the character considered by the Court under *Rule 10*, the decision of the Massachusetts Appeals Court is consistent with applicable Massachusetts appellate case law and, more generally, a similar longstanding rule of this Court regarding appellate review of trial court dismissal orders and decisions. In response to Raytheon's Motion to Dismiss, the Massachusetts Superior Court relied on Rule 12(b)(9) of the Massachusetts Rules of Civil Procedure to dismiss Petitioner's race discrimination and retaliation claims against Raytheon based upon the "[p]endency of a prior action in a court of the Commonwealth." (Pet. at 6a). The Massachusetts Appeals Court found that the Superior Court erred in relying on Rule 12(b)(9) to dismiss Pe-

titioner's race discrimination and retaliation claims against Raytheon. (Id.). The Appeals Court nonetheless affirmed the dismissal of the claims on the alternative, valid ground that with respect to both claims, Petitioner failed to state a claim upon which relief can be granted. *See Rule 12(b)(6) of the Massachusetts Rules of Civil Procedure;* (Pet at 7a-8a). Specifically, as to Petitioner's race discrimination claim, the Court found that Petitioner did not allege in her complaint that Mr. Buliung discriminated against her on the basis of race. (Pet. at 8a). As to Petitioner's retaliation claim, the Appeals Court found that Petitioner failed to allege in her complaint the required element that she suffered an "adverse employment action," as defined under state law. (Id.).

Petitioner argues that the Massachusetts Appeals Court's alleged "sua sponte" decision to affirm the Superior Court's ruling under Rule 12(b)(6) (as opposed to affirming on grounds relied on by the Superior Court) "is unprecedented in US history." (Pet. at 11). Contrary to Petitioner's argument, the Massachusetts Appeals Court's decision is consistent with relevant Massachusetts precedent, which permits appellate courts to affirm dismissal orders and decisions on grounds different than those relied upon by the trial court. Specifically, the Massachusetts Supreme Judicial Court has stated that the granting of a dispositive motion should be upheld "if there is any valid ground on which the motion should have been granted," whether or not the valid ground was relied on by the trial court. *Alholm v. Town of Wareham, 358 N.E.2d 788, 791 (Mass. 1976). See also St. Germaine v. Pendergast, 584 N.E.2d 611,*

614 & n. 9 (Mass. 1992)(any obvious ground, even though not raised in the trial court, can be appropriately used to uphold the judge's grant of summary judgment). This Massachusetts rule of appellate review is consistent with this Court's longstanding rule that, "in reviewing the decision of a lower court, it must be affirmed if the result is correct although the lower court relied upon a wrong ground or gave a wrong reason." *Sec. and Exch. Comm'n v. Chenery Corp., 318 U.S. 80, 88 (1943)*(internal citations omitted). According to the Court, "[t]he reason for this rule is obvious. It would be wasteful to send a case back to a lower court to reinstate a decision which it had already made but which the appellate court concluded should properly be based on another ground within the power of the appellate court to formulate." *Id.* Based on the foregoing, even if the question presented in the petition is of the character considered by this Court under *Rule 10*, there is no basis to review or overturn the Massachusetts Appeals Court's decision to affirm the dismissal of Petitioner's race discrimination and retaliation claims because the decision is consistent with Massachusetts precedent and a longstanding rule of this Court concerning appellate review of trial court dismissal orders and decisions.

III. THE PETITION SHOULD BE DENIED BECAUSE THE MASSACHUSETTS APPEALS COURT'S DECISION IS CONSISTENT WITH THE DECISIONS OF A MAJORITY OF UNITED STATES COURTS OF APPEAL AND SEVERAL STATE APPELLATE COURTS.

Petitioner asserts that the Massachusetts Appeals Court's "*sua sponte*" dismissal of her race discrimination and retaliation claims for failure to state a claim upon which relief can be granted is "unprecedented in US history . . .," and inconsistent with principles of due process and the adversarial process. (Pet. at 11-15). Petitioner's assertions are incorrect. The Massachusetts Appeals Court's decision to dismiss Petitioner's race discrimination and retaliation claims on its own initiative under Mass.R.Civ.P. 12(b)(6) is consistent with decisions of a majority of United States courts of appeals interpreting the analogous Rule 12(b)(6) of the Federal Rules of Civil Procedure and several state appellate courts.

Specifically, a court "may dismiss a claim *sua sponte* under Fed.R.Civ.P. 12(b)(6) . . .. Such a dismissal may be made without notice where the claimant cannot possibly win relief." *Omar v. Sea-Land Service, Inc., 813 F.2d 986, 991 (9th Cir. 1987)* (internal citations omitted); *see, e.g., Gonzalez-Gonzalez v. United States, 257 F.3d 31, 37 (1st Cir. 2001)*("If it is crystal clear that the plaintiff cannot prevail and that amending the complaint would be futile, then a *sua sponte* dismissal [without notice] may stand . . . "); *Leonhard v. United States, 633 F.2d 599, 609 &*

n.11 (2d Cir. 1980)(the district court has the power to dismiss a complaint *sua sponte* for failure to state a claim); *Bryson v. Brand Insulations, Inc., 621 F.2d 556, 559 (3d Cir. 1980)*(the district court may on its own initiative enter an order dismissing the action provided that the complaint affords a sufficient basis for the court's action); *First Gibraltar Bank, FSB v. Smith, 62 F.3d 133, 135 (5th Cir. 1995)(sua sponte* dismissal of meritless counterclaim under Rule 12(b)(6) permitted even though defendant did not file motion to dismiss for failure to state a claim for relief); *Hoskins v. Poelstra, 320 F.3d 761, 763 (7th Cir. 2003)*(judges have ample authority to dismiss frivolous or transparently defective suits spontaneously under Fed.R.Civ.P. 12(b)(6), and "thus save everyone time and legal expense"); *Smith v. Boyd, 945 F.2d 1041, 1042-43 (8th Cir. 1991)*(district court *sua sponte* may dismiss complaint under Rule 12(b)(6) so long as dismissal does not precede service of process; although district court should provide pre-dismissal notice, failure to give plaintiff notice and opportunity to respond does not mandate reversal if it is patently obvious that plaintiff could not prevail based on facts alleged in complaint); *McKinney v. Oklahoma, 925 F.2d 363, 365 (10th Cir. 1991)* (although preferred practice is to accord plaintiff notice and opportunity to amend complaint before acting upon motion to dismiss for failure to state a claim, *sua sponte* dismissal under Rule 12(b)(6) is not reversible error when it is patently obvious that plaintiff could not prevail on the facts alleged and allowing opportunity to amend complaint would be futile); *Best v. Kelly, 39 F.3d 328, 331 (D.C.Cir. 1994)*(complaint may be dismissed, *sua sponte* if need be, under Rule 12(b)(6) wherever "the plaintiff cannot possibly win relief").

See also 5A C. Wright & A. Miller, Federal Practice and Procedure: Civil § 1357 at 301 (2d ed. 1990)(federal district court may dismiss meritless claims *sua sponte* under Fed.R.Civ.P. 12(b)(6)). This Court has not passed judgment on the permissible scope of *sua sponte* dismissals under Fed.R.Civ.P. 12(b)(6). *See Neitzke v. Williams, 490 U.S. 319, 329 & n. 8 (1989).*

Several state appellate courts have followed the majority of United States courts of appeals and held that *sua sponte* dismissal of a complaint is warranted where the claimant cannot prevail on the facts alleged in the complaint. *See, e.g., State ex rel. Scott v. Cleveland, 859 N.E.2d 923, 926 (Ohio 2006)*(*sua sponte* dismissal of claim without notice is permissible under Rule 12(b)(6) where claimant cannot possibly prevail on the facts alleged in the complaint); *Harper v. Clarke, 713 N.W.2d 502, 506-07 (Neb.App. 2006)*(same); *Albrecht v. First Federal Sav. and Loan Ass'n of Grand Forks and Minot, 372 N.W.2d 893, 894-895 (N.D. 1985)*(same).

The common theme among all of the above referenced cases in which *sua sponte* dismissal (for failure to state a claim upon which relief can be granted) has been upheld is the court's finding that it is *obvious* that the claimant has failed to allege facts that could possibly entitle her to relief. This common theme is evident in the Massachusetts Appeals Court's decision to affirm the dismissal of Petitioner's race discrimination and retaliation claims. Specifically, as the Massachusetts Appeals Court noted, Petitioner cannot possibly prevail on her race discrimination claim because she did not allege that

the Company or its agents discriminated against her *on the basis of race.* (Pet. at 8a). Similarly, Petitioner cannot prevail on her retaliation claim because she failed to allege that she suffered an adverse employment action, which is a required element of her *prima facie* case of retaliation under Massachusetts law. *See Tate v. Department of Mental Health, 645 N.E.2d 1159, 1165 (Mass. 1995); MacCormack v. Boston Edison Co., 672 N E.2d 1, 7-8 (Mass. 1996).* Therefore, consistent with the above referenced federal and state case law, the Massachusetts Appeals Court properly dismissed Petitioner's race discrimination and retaliation claims under Mass.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief can be granted.

Finally, Petitioner was accorded due process and permitted to participate in the "adversarial process" in the Massachusetts courts -- her case was considered by the Massachusetts Superior Court, the Massachusetts Appeals Court twice (on appeal and Petitioner's Petition for Rehearing), and the Massachusetts Supreme Judicial Court twice (on Petitioner's Application for Further Appellate Review and her Petition to Reconsider the Court's denial of her Application for Further Appellate Review). (Pet. at 2-3).

Based on the foregoing, there is no conflict between the Massachusetts Appeal Court's decision and that of a United States court of appeals, state court of last resort or this Court on an important federal question that is appropriate for review and, accordingly, Petitioner's petition should be denied as to the question presented.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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